



# **SITE CLOSURE CONSIDERATIONS FROM THE LANDOWNER, LENDER & LEGAL PERSPECTIVE**

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***MARYLAND'S INAUGURAL STATEWIDE  
BROWNFIELD CONFERENCE: TOWARD  
BENEFICIAL REUSE  
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**Whiteford | Taylor | Preston<sup>LLP</sup>**

# Why are we all here?

## What's the public policy behind brownfields redevelopment- why beneficial reuse?

- **Community & neighbors-** a healthy & safe community, providing resources for themselves and their families, free of blight
- **Government & elected officials-** good jobs, a healthy environment, restore Properties to beneficial use, and increase the tax base





## *Why are we all here?*

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**What do Landowners, Developers, their Lenders, Tenants, and Legal folk need?**

**They are looking at the project in terms of risk:**

- *What is the risk associated with the project?*
- *What is the likelihood of those events occurring?*
- *What are the ramifications of those events occurring?*
  - \* *Incurring environmental liability*
  - \* *Project delays*
  - \* *Inability to finance or then sell or lease*
  - \* *At its core it can be a question of dollars and time*



## *Why are we all here?*

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To help mitigate that risk, they need:

- **Clarity and consistency of requirements from regulators-** what do owners and developers need to do to make this happen?
- **What is the timeframe-** how long will it take for government agencies to complete their required tasks?
- **What will this mean for future occupants-** how will any requirements limit future use of the property, affect its day to day users, and its marketability?
- **What financial assistance exists to help make this all possible-** assessment & cleanup grants; federal, state, and local tax credits & incentives?



## *Clarity and consistency of requirements*

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**\*\*\*This is absolutely key\*\*\***

What will be required of me

- a) before we get into the project,
- b) during the project's redevelopment, and
- c) after the project is complete?

*Multi-year timelines and budgets are all based on reasonable expectations tied to those obligations- landowners and developers simple cannot afford to take on Brownfields redevelopment projects without clarity and consistency.*



## *Clarity and consistency of requirements*

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*Maryland's VCP and CHS process, especially in recent years, are both designed and managed in a way that makes this all possible.*

*A key initial step is the owner working with its counsel and consultants to determine what is the most appropriate regulatory path to meet its goals.*

## *What is the timeframe?*

**How long will it take for government officials to do their part in reviewing and approving actions and activities?**

- Projects like this take time, but they depend on close coordination and phasing of activities.
- Regulatory delays, like all others, can snowball and have major impacts.
- Timely and comprehensive government responsiveness, as is required from all other parties working on a project, is key.





## *What is the timeframe?*

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The VCP restricts activities that disturb the ground can cause issues when acquisition and construction timing requirements don't necessarily match up with acquisition and those statutory limitations.

*Flexibility is the key- the "LRP two-step":*

- a. Apply to the VCP and secure long-term IP status;
- b. Withdraw from the VCP and request oversight under the CHS;
- c. Complete site investigation, remediation, and mitigation required to the same standards required by VCP and CHS; and
- D. Re-apply to VCP for a NFRD.

## *What is the timeframe?*





## *What will this mean for future occupants?*

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- *Activity and use restrictions*- residential, commercial/industrial, public recreational areas per VCP or CHS.
- *Site planning constraints*- are there portions of the site that may have greater restrictions than other areas?
- *Construction requirements*- phasing of construction activities because of engineered mitigation measures (e.g., work can't proceed until something else happens).
- *Construction restrictions*- tenants and occupants can't use X or Y in building finishes.
- *Ownership restrictions*- for residential properties on brownfields, how are they owned and managed?



## *What will this mean for future occupants?*

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- *Long-term monitoring*- what does this mean, day to day and in a practical sense, for site owners and occupants five, ten, twenty years down the road?

***How can we make this as simple as possible to understand and comply with while protecting human health and the environment?***

- *Environmental covenants*- what do they restrictions in covenants really and truly mean for future occupants? What is and what isn't necessarily allowed?



## *What financial assistance exists to help make this all possible?*

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Brownfields projects naturally involve greater risk and uncertainty:

- uncertainty can mean higher construction costs,
- can limit the market for financing,
- uncertainty can mean financing is more expensive,
- uncertainty can mean there are higher carrying costs, and
- uncertainty and location can mean lower rents must be charged to attract users.

It can be *really, really hard* to put together the financing necessary to complete a brownfields project, and financial incentives are often a necessary and critical part of that package.



## *What financial assistance exists to help make this all possible?*

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- Assessment grants for longer-term, public and non-profit projects are always welcomed. Slower process makes this more challenging for commercial projects.
- State and local tax incentives are *key* for commercial Brownfields redevelopment simply because they're often required to offset the higher costs of Brownfields projects.

*Maryland's Brownfield Revitalization Incentive Program enables local taxing jurisdictions to implement a local program granting real property tax credits to qualified Brownfields projects.*



## *What financial assistance exists to help make this all possible?*

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Brownfield real property tax credits are currently available in twelve Maryland counties and Baltimore City, plus four municipalities.

*(Each jurisdiction's program is different, and paperwork requirements can be nuanced, so be sure to ask questions as needed.)*

*Per state law, they provide for at least a 50% tax credit of the property tax attributable to an increase in the property's assessment following the completion of the redevelopment project for a period of five years. Jurisdictions may also extend that time period for up to an additional five years for properties located in an Enterprise Zone.*



## *So how does this all happen?*

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### *Details, details, details!*

- *Always be thinking ahead multiple steps.*
- *How can you document, and how can you explain what is required of someone ten years from now?*
- *You do need to sweat the details on property transactions and make sure the real property transferred and ownership tracks VCP requirements and any existing covenants as intended (especially with subdivisions and lot line adjustments).*
- *Its all about the people- project managers, consultants, counsel, and certainly regulators all communicating and working together towards a common goal.*



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**THANK YOU.**

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